

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA

IN RE: )  
 )  
CHAPTER 11 PROCEDURES ) GENERAL ORDER NO. 03-10  
 )

**1. Applicability.** Except as provided herein, this General Order applies to all Chapter 11 cases in all divisions, including as to prospective matters in cases pending as of the date of entry of this order. This order supersedes any local rule with which it conflicts. By this order, the Court rescinds Local Rule B-2018-1, Intervention, as it applies to Chapter 11 cases. The Court on its own motion or the request of any party may determine that provisions of this order will not apply as to a specific case.

**2. Definitions.**

Terms not defined here have the meaning given in the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

2.1 Applicant: defined at ¶ 6.1.

2.2 Clerk: the Clerk of the Court.

2.3 Court: the United States Bankruptcy Court for the Southern District of Indiana.

2.4 Debtor: a debtor-in-possession in a Chapter 11 case.

2.5 Employment Application: defined at ¶ 6.1.

2.6 Expedited Service: Option A: service by same-day hand delivery, or fax, or e-mail where authorized; Option B: same-day hand delivery, or fax, or e-mail where

authorized, or next-morning overnight delivery.

2.7 Financing Motions: defined at ¶ 5.1.

2.8 First Day Motions: defined at ¶ 4.

2.9 Motion to Sell: defined at ¶ 8.1.

2.9 Notice List: the Service List **and** parties required to receive notice pursuant to Fed.R.Bank.P. 2002, unless the Debtor has obtained an order limiting notice.

2.10 Prepackaged Chapter 11 Case and related terms: defined at ¶ 9.1 et seq.

2.11 Professional: defined at ¶ 6.1.

2.12 Service List: defined at ¶ 3.2.

2.13 UST: the United States Trustee for Region 10.

### **3. Appearances and Debtor's Obligation to Establish and Maintain Service List.**

3.1. Appearances. Interested parties or their counsel who wish to receive copies of all documents (other than proofs of claim) filed in a case shall file with the Clerk and serve the Debtor and Debtor's counsel with an appearance. Parties shall give their address, telephone and fax numbers, and are encouraged to provide an e-mail address and to authorize service by e-mail. Any change to or withdrawal of an appearance shall be filed with the Clerk and served upon the Debtor and Debtor's counsel.

3.2. Service List. Unless otherwise ordered by the Court, the Debtor shall be responsible for maintaining a list of all parties who have entered appearances or who are otherwise required to be on the list by this order ("the Service List"). The initial Service List shall include the Debtor, Debtor's counsel, the twenty largest unsecured creditors, counsel for the unsecured creditors' committee, the UST, all secured

creditors or their counsel, any indenture trustee, and any party who has filed an appearance. The initial Service List shall be filed with the Clerk no later than five days after the filing of the petition.

3.3 Updated Service Lists. The initial Service List shall be updated by the Debtor no later than fifteen days after the petition date, and shall be updated every thirty days thereafter for the six months after the petition date. After the first six months, the Service List shall be updated as new appearances are filed, but no more frequently than once each month. A copy of each updated Service List shall be filed with the Clerk, and served upon the entities on the list. Each Service List shall include the date last updated. When possible, the Debtor or Debtor's counsel shall make the Service List available on a Web site.

3.4 Deletion from Service List. If counsel appears for a creditor on the Service List, then counsel shall be substituted for that creditor on the Service List, absent a specific request to be retained on the Service List. An unsecured creditor on the list of twenty largest unsecured creditors that is not selected to serve on the committee shall be deleted from the Service List upon filing of the notice of the appointment of the creditors' committee, absent a specific request to be retained on the Service List. After the appearance of counsel for the creditors' committee, committee members shall be deleted from the Service List, absent a specific request by that creditor to be retained on the Service List.

3.5 Pro Hac Vice. Counsel not admitted to practice in the Southern District of Indiana shall comply with the requirements of S.D.Ind.L.R. 83.5(c).

#### **4. First Day Motions.**

4.1. Motions Included. In order to qualify as a First Day Motion, the motion must be filed with the petition, or within two business days after, state in its caption that it is a First Day Motion, and be one of the motions included on the list below. The First Day Motions listed in subparagraph 4.6 below shall be scheduled for an expedited hearing without any formal request by the Debtor. Other motions will only be set for hearing on an expedited basis if accompanied by a request for expedited hearing which establishes sufficient cause for such treatment.

4.2. Procedure Prior to Filing. Prior to filing, Debtor's counsel shall endeavor to confer with and provide copies of any First Day Motions to the UST. Counsel shall include in any First Day Motion, or in a separate pleading, a statement of efforts made to meet with the UST and affected parties prior to filing when possible. Debtor's counsel shall also contact the Court's Senior Courtroom Deputy to advise that a case with First Day Motions will be filed.

4.3. Procedure Upon Filing. Upon filing, Debtor's counsel shall contact the Courtroom Deputy for the judge assigned. The judge assigned, or a designated replacement, shall schedule and conduct a hearing on the First Day Motions within two business days of their filing, if possible, unless the Debtor requests a later hearing date.

4.4. Service of First Day Motions and Notice. Debtor's counsel shall serve copies of all First Day Motions and notice of the hearing on the initial Service List; known counsel for any party; and named respondents. Notice of the hearing shall be given by Expedited Service Option A. Copies of the First Day Motions shall be sent by Expedited Service Option B. Failure to give timely notice may result in relief being denied or the hearing continued.

4.5. Contents of Notice. The notice of hearing on the First Day Motions shall provide: (1) the date and time of the hearing; (2) a list by title of the First Day Motions; and (3) the correct mailing address, fax number, telephone number, and e-mail address of the Debtor's counsel.

4.6. List of Included Motions. The following shall be treated by the Court as First Day Motions if filed with the petition or within two business days thereafter:

4.6(a) motion for joint administration;

4.6(b) motion for use of cash collateral (interim hearing only)

(see ¶ 5 below);

4.6(c) motion for post-petition financing (interim hearing only) (see ¶ 5 below);

4.6(d) motion to pay pre-petition employee wage claims (to the limit provided by §507);

4.6(e) motion to limit notice generally;

4.6(f) motion to provide adequate assurance to utilities;

4.6(g) motion to pay pre-petition trust fund taxes;

4.6(h) motion to honor pre-petition obligations to customers (to the limit provided by §507);

4.6(i) motion to vary United States Trustee financial requirements, such as motion to authorize maintenance of existing bank accounts, existing business forms, cash management system, investment procedures, etc.;

4.6(j) motion for authority to pay pre-petition claims of

alleged critical vendors; and

4.6(k) motion to reject leases and contracts.

## **5. Motions for Use of Cash Collateral and/or Financing.**

5.1. Motions. Except as provided herein, all cash collateral and financing requests under 11 U.S.C. §§ 363 and/or 364 ("Financing Motions") shall be brought by motion filed pursuant to Fed.R.Bank.P. 4001 and 9014.

5.2. Interim Relief. When Financing Motions are filed as First Day Motions, the Court may grant interim relief pending review by the interested parties of the proposed arrangements. Such interim relief is intended to avoid immediate and irreparable harm to the estate pending a final hearing. **Absent extraordinary circumstances, the Court may not enter interim orders that include any of the provisions identified in ¶ 5.3 of this general order.**

5.3. Provisions to be Disclosed. All Financing Motions must (1) recite whether the proposed form of order, stipulation, or loan agreement contains any provision of the type indicated below, and (2) identify by page and paragraph the location of any such provision in the proposed form of order, stipulation or loan agreement:

5.3(a) Cross-Collateralization of Pre-Petition Debt. Provisions that grant cross-collateralization protection (other than replacement liens or other adequate protection) to the prepetition secured creditor, i.e., clauses that secure prepetition debt by postpetition assets in which the secured creditor does not assert a valid, perfected security interest by virtue of its prepetition security agreement or applicable non-bankruptcy law, and

provisions that deem prepetition secured debt to be postpetition debt or that use postpetition loans from a prepetition secured lender to pay all or part of that lender's prepetition claim, other than as provided in 11 U.S.C. § 552(b);

5.3(b) Validity of Claims and Release of Claims. Provisions or findings of fact that bind the estate or all parties in interest with respect to the validity, perfection, or amount of the secured creditor's prepetition lien or debt or that waive or release any or all claims against the secured creditor without first giving parties in interest at least ninety days from the entry of the order to investigate such matters;

5.3(c) Surcharge. Provisions that seek to waive the estate's rights under 11 U.S.C. § 506(c);

5.3(d) Professional Fee Provisions. Provisions that provide disparate treatment for the professionals retained by a creditors' committee from that provided for the professionals retained by the debtor with respect to a professional fee carve-out;

5.3(e) Liens on Avoidance Actions. Provisions that grant liens on the debtor's rights, claims and causes of action, or proceeds thereof, arising under Chapter 5 of Title 11, United States Code;

5.3(f) Relief from Stay. Provisions that grant a creditor relief from the automatic stay without further order or hearing upon the breach of the cash collateral or financing order or agreement;

5.3(g) Priming of Existing Liens. Provisions that prime any secured lien,

without the consent of the holder of that lien;

5.3(h) Loan Documentation Costs. Provisions that call for the payment of fees or costs by the debtor, other than reasonable attorney's fees for loan documentation; and

5.3(i) Plan Restrictions. Provisions that limit or restrict the right of a debtor or any other party in interest to submit a plan of reorganization, or which would affect the terms of any such plan.

5.4 Summary of Essential Terms. All Financing Motions must set forth, unless good cause is shown, the total dollar amount requested, the debtor's proposed budget for the use of the funds, an estimate of the value of the collateral which secures the creditor's asserted interest, the maximum borrowing available on an interim and final basis, the borrowing conditions, interest rate, fees, costs or other expenses to be borne by the Debtor, maturity, limitations on the use of the funds, events of default and the protections afforded under 11 U.S.C. § 363 and 364.

## **6. Employment of Professional Persons and Treatment of Retainers.**

6.1. Employment Application. Any person (the "Applicant") seeking Court approval of the employment of a professional person (the "Professional") pursuant to 11 U.S.C. §§ 327, 1103(a) or 1114 shall file with the Court an application and a supporting affidavit or verified statement of the professional complying with Fed.R.Bankr.P. 2014 ("an Employment Application"), and a proposed order on the



Employment Application. Promptly after discovering any additional material information relating to such employment (such as additional potential or actual conflicts of interest), the Applicant and Professional shall file and serve a supplemental affidavit disclosing the additional information.

6.2. Service of Notice and Hearing. The Employment Application (including supporting affidavit or verified statement of the Professional and any supplemental affidavit) shall be served on the Service List. Notice of the Employment Application, an objection deadline, and any hearing shall be served on the Notice List. Any creditor or other party in interest who wishes to resist the Employment Application must on or before the objection deadline provided in the notice file an objection and serve such objection upon the Applicant, the Professional, and the Service List. If no objection is filed by the objection deadline, the Court may grant the Employment Application and approve the proposed employment without a hearing or further notice. If the Employment Application is granted, the employment shall be effective as of the date the Employment Application was filed unless otherwise ordered by the Court.

6.3. Conflicts. If a Professional seeks to resolve any potential conflict of interest concerning any other client or former client the Professional shall comply with applicable Rules of Professional Conduct. All consents or waivers of conflicts of interest ("waivers") shall be in writing. The Professional shall serve copies of all such waivers upon the Applicant and the Service List with the Employment Application or promptly following receipt by the Professional of a waiver.

6.4. Disclosure of Compensation and Retainers. As part of the Employment Application, a Debtor and a proposed Professional shall obtain approval of the Court of an arrangement whereby a retainer paid by the Debtor to the Professional may be retained and applied to the satisfaction of such Professional's fees and expenses. Those financial arrangements may include provisions similar to the following:

6.4(a) the retainer shall be applied to satisfy the Professional's fees and expenses as they are approved by the Court pursuant to 11 U.S.C.

§§ 330 and 331;

6.4(b) the Professional may hold the entire retainer without any application to payment of fees and expenses, until final approval by the Court of such professional's final application for fees and expenses, with such allowed interim fees and expenses paid periodically from other estate assets;

6.4(c) any other arrangement approved by the Court.

6.5. Periodic Payment Procedure. Subject to prior Court approval, the Professional and Debtor may agree to a streamlined procedure for periodic payment of fees and costs prior to allowance by the Court. Any proposed procedure shall provide for payment of no more than 80% of requested fees, but may provide for payment of 100% of expenses.

6.5(a) All such arrangements shall provide that prior to the fee draw the Professional must file with the Clerk a Notice of Draw which sets forth the amount of the proposed draw and contains, as an attachment, a copy of the periodic billing which supports the amount of the draw.

6.5(b) A copy of the Notice of Draw shall be served upon the Service List and, in addition, a copy of the relevant periodic billing shall be delivered to the UST. Failure of a party to object to a draw does not affect the party's right to object to the final allowance of fees and expenses. Court approval of the draw procedure is not approval of fees and expenses. All fees and expenses drawn are subject to disgorgement until the Court allows the final fee application of the Professional.

## **7. Procedure for Obtaining Expedited Hearing on Non- First Day Motions and Contested Matters.**

7.1. General Application. This provision shall govern the procedures to be followed for hearings held on notice shortened pursuant to Fed.R.Bankr.P. 9006(c) with respect to a matter that is (1) not a First Day Motion or (2) a contested matter, including contested matters within adversary proceedings.

7.2. Filing Requirements. A request for an expedited hearing shall be made by separate written motion, and shall clearly refer to the non- First Day Motion or the contested matter to which it pertains (the "underlying motion"), shall specifically state the nature of the emergency or why there is a need for expedited treatment and shall state the time by which the expedited hearing is requested to be held. File-marked copies of the motion for expedited hearing and the underlying motion along with a proposed Order Setting Expedited Hearing shall be delivered to the chambers of the Judge to whom the case is assigned. The motion for expedited hearing shall be considered by the Judge without a hearing. If the Court grants the motion for expedited

hearing, the Court will issue the Order Setting Expedited Hearing.

7.3. Service of Motion for Expedited Hearing and Underlying Motions. The movant shall serve the motion for expedited hearing and the underlying motion. If the expedited hearing is to be held on notice of five days or less, service of the motion for expedited hearing and the underlying motion shall be made on the Service List, affected parties, and any other parties as the Court directs, by Expedited Service Option A. If the expedited hearing is to be held on more than five days notice but less than the notice required by Fed.R.Bankr.P. 2002, service of the motion for expedited hearing and the underlying motion shall be made on the Service List, affected parties, and any other parties as the Court directs, by Expedited Service Option B. If the matter to be heard is a contested matter within an adversary proceeding, service of the motion for expedited hearing and the underlying motion shall be made in the manner described above but shall be served only upon all parties to the adversary proceeding, and other parties as the court may direct.

7.4. Distribution of Order Setting Expedited Hearing and Certificate of Mailing. The movant shall distribute the Order Setting Expedited Hearing in the same manner as service of the motion for expedited hearing and underlying motion as provided for in ¶ 7.3. No later than three days before the hearing, the movant shall file a certificate of mailing, certifying that a copy of the Order Setting Expedited Hearing was sent to all parties entitled to receive notice of the expedited hearing. The certificate of mailing shall have attached as exhibits: (A) a copy of the Order Setting Expedited Hearing and (B) a list of the parties to whom the order was sent.

7.5. Contents of Order Setting Expedited Hearing. The Order Setting Expedited

Hearing shall contain the same information as required for the notice of hearing on First Day Motions found at ¶ 4.5 above, and also the following: (1) a brief description of the relief requested in the underlying motion; (2) the last date to object to the underlying motion, and, if no objection date is established, that objections are due immediately before the hearing; (3) that any objection must be in writing and filed with the Clerk, and provide the address; (4) that a copy of the written objection must also be served upon counsel for the movant, or the movant itself, if not represented by counsel. In the event the objections are due immediately before the hearing, the order shall also state that file marked copies of the objection must be delivered immediately upon filing to the chambers of the Judge to whom the case is assigned, and that sufficient copies should be provided for service upon parties in the expedited hearing on the underlying motion.

## **8. Procedure for Sale of Substantially All Assets Under Section 363 Within 60**

### **Days of Filing**

8.1. The Motion to Sell. A motion to approve the sale of substantially all assets within sixty days of the filing of the petition (the "Motion to Sell"), shall include the following information:

8.1(a) Proceeds of Sale. If the Debtor has identified a prospective purchaser, an estimate of the gross proceeds anticipated from the sale, an estimate of the net proceeds coming to the estate, and an itemization of all expenses to be incurred in connection with the proposed sale.

8.1(b) Sale Contingencies. A brief summary of all material contingencies to the sale agreement, together with a copy of the agreement, if available.

8.1(c) Debt Structure of Debtor. If schedules have not been filed by the Debtor, a summary of the Debtor's debt structure, including the amount of the Debtor's secured debt, priority claims and general unsecured claims.

8.1(d) Marketing of Assets. A description of the manner in which the assets were marketed for sale, and where there is an identified prospective purchaser, a description of any other offers to purchase.

8.1(e) Topping Fees and Break-up Fees. Any request for the approval of a topping fee or break-up fee provision shall be supported by a statement of the conditions under which the topping fee or break-up fee would be payable and the factual basis on which the seller determined the provision was reasonable. The request shall also disclose the identities of any other entity that expressed to the debtor an interest in the purchase of all or a material portion of the assets to be sold within ninety days prior to the filing of the sale motion, the offers made by them (if any), and the nature of the offer.

8.1(f) Relationship of Buyer. Where there is an identified prospective purchaser, a statement identifying the buyer, and setting forth all of the known relationships between the buyer and its insiders and the debtor and its insiders.

8.1(g) Post Sale Relationship with Debtor. Where there is an identified prospective purchaser, a statement setting forth any relationship or connection the Debtor (including its insiders) will have with the buyer after the consummation of the sale, assuming it is approved.

8.1(h) Creditors Committee. If a creditors committee, or its equivalent, existed pre-petition, the identity of the members of the committee and the companies with which they are affiliated, and the identify of any counsel.

8.2. Motion for Bid Procedures. If the Motion to Sell contemplates competitive bidding, a motion to establish bid procedures ("Motion for Bid Procedures") must be filed separately and on the same day as the Motion to Sell.

8.2(a) Notice. The notice for the hearing on a Motion for Bid Procedures must describe the proposed bidding procedures, and must contain a deadline for filing objections. If there is an existing proposed purchase agreement, the moving party shall describe the terms of the sale proposed, when a copy of the actual agreement will be available, and from whom it may be obtained. The notice shall be served upon the Notice List.

8.2(b) Objections to Motion for Bid Procedures. Any objection to the Motion for Bid Procedures shall be served on all parties on the Service List, and to the extent known to the objecting party, to any purchasers or potential purchasers [or their counsel, where applicable] identified in the Motion to Sell, and to any party who requested a copy of the Motion for Bid Procedures. Where possible, the objection to Motion for Bid Procedures shall be served at least one day prior to the hearing on the Motion for Bid Procedures, and where possible, shall be served by Expedited Service Option A. A file-marked copy of the objection shall be

delivered to chambers at the time of filing.

8.3. Hearing on Motion to Sell. If bid procedures are to be approved by the Court, the hearing on the Motion to Sell shall be scheduled, if practicable, no more than thirty days following the Court's approval of bid procedures.

8.4. Hearing on Motion for Bid Procedures. A hearing on a Motion for Bid Procedures may be scheduled on five days notice, calculated pursuant to Bankruptcy Rule 9006(a).

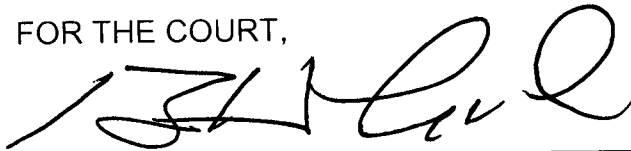
8.5. Service of the Motion to Sell and Motion for Bid Procedures. The Motion to Sell, and Motion for Bid Procedures, if any, shall be delivered as soon as possible to all parties on the Service List, to any purchasers or potential purchasers [or their counsel, where applicable] identified in the Motion to Sell, and to any party requesting a copy.

8.6. Financial Ability to Close. Unless the court orders otherwise, any purchaser pursuant to a Motion to Sell, or bidder pursuant to a Motion for Bid Procedures, must be prepared to demonstrate through an evidentiary hearing, its ability to consummate the transaction if it is the successful purchaser or bidder, along with evidence regarding any financial contingencies to closing the transaction.

**This order shall become effective on November 3, 2003.**

SO ORDERED THIS 18<sup>th</sup> DAY OF Sept., 2003.

FOR THE COURT,



Basil H. Lorch, III, Chief Judge  
United States Bankruptcy Court